Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

No._____

JAMES W. DEATON

PETITIONER

V.

U.S. DEPARTMENT OF AGRICULTURE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

James W. Deaton
103 Dover Court
Starkville, Mississippi 39759
(601) 323-2304
Pro Se

8 pp

QUESTIONS

1. Does an Agency-controlled, executive branch-employed Administrative Judge, who is barred by judicial immunity from being sued individually for his actions, have the right to threaten then enforce sanctions against an individual because an individual wants to discuss a valid whistleblowing issue?

2. Does an Agency-controlled, executive branch-employed Administrative Judge, who is barred by judicial immunity from being sued individually for his actions, have the right to enforce sanctions against an individual and allow no valid whistleblowing issues to be discussed because an individual wants to discuss a valid whistleblowing issue concerning the intentional production and intentional release of E. Coli 0157:H7 upon an unsuspecting human population?

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TABLE OF AUTHORITIES

Whistleblower Protection Act. The petitioner respectfully prays for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Federal Circuit is given in the Appendix on pages 2 through 6.

JURISDICTION

The Judgment of the Court of Appeals, Appendix page 7 was entered on August 21, 1997, the Petition for rehearing was denied on September 23, 1997, Appendix page 8. The jurisdiction of this court was supplied me by an information sheet from the U.S. Court of Appeals for The Federal Circuit. I am the petitioner pro se.

STATEMENT OF ISSUE

Prior to the Merit Systems Protection Board hearing, I provided detailed information to the Agency about the alleged whistleblowing disclosure exactly as the Administrative Judge ordered, Appendix page 9.

STATEMENT OF REASONS WHY WRIT OF CERTIORARI BE GRANTED

Under the rights granted me by the Whistleblower Protection Act I had a right to discuss at the hearing the fact that the Agency knowingly and intentionally produces and releases upon unsuspecting people the human pathogen E. Coli 0157:H7 and in particular in Nebraska where the U.S. Meat Animal Research Laboratory is located.

Under the rights granted me by the Whistleblower Protection Act I had a right to discuss at the hearing the fact that a racial assault occurred, the Agency tried to cover-up the fact that a racial assault occurred and the Agency had the EEO complaint process so hidden at the location where it was impossible to determine how to file an EEO complaint.

Because the Agency controlled Administrative Judge imposed sanctions against me, I was not allowed to defend myself under the rights granted me under the Whistleblower Protection Act and the U.S. Court Of Appeals For The Federal Circuit would not correct the situation.

STATEMENT OF THE CASE

According to the June 27, 1996 order, Appendix page 9. I was submitting too much discovery material. The record then shows that I properly and timely filed the prehearing submissions as ordered.

I got into this maze when I refused to conduct nor condone the intentional production and intentional release of Salmonella enteritidis upon unsuspecting people. The Agency demanded that I intentionally

produce and intentionally release as much as 200 pounds daily of Salmonella enteritidis upon the students of Mississippi State University and the residents of Oktibbeha County, Mississippi. That particular project was conducted with taxpayer dollars in Pennsylvania.

The Agency testified that it is an acceptable risk project to intentionally produce and intentionally release Salmonella enteritidis upon an unsuspecting people and it was determined that this disclosure was not protected. Deaton v. U.S. Department of Agriculture, MSPB Docket No. AT-122191WO726 (Oct.8, 1991), aff'd 52 M.S.P.R. 124 (Table), aff'd 979 F. 2d 217 (Fed. Cir. 1992) (Table), cert denied, 507 U.S. 915 (1993). The Administrative Judge and the Agency representative did not believe the ploy of acceptable risk used for Salmonella enteritidis would work again for E. Coli 0157:H7 thus the reason for the sanctions so no discussions could occur concerning the intentional production and intentional release of E. Coli 0157:H7 upon unsuspecting people as the hearing would have demonstrated.

Just prior to my being abruptly locked from my office and work and never allowed to return, I attempted to assist a Wg-5 Animal

Caretaker who had been racially assaulted. The man came to my house practically crying about the racial assault. I also had a critical element in my performance standards which said I could be fired if I tolerated racism and I certainly do not tolerate racism. Because of my stance concerning human pathogen research I was not popular with management anyway. I found that the EEO complaint process and procedure was so hidden at that location that even the prior EEO Counselor stated he did not know how to file a complaint. The Agency then tried to cover-up the racial assault. I reported the issue to the OIG and the record shows that I had a right to discuss this whistleblowing issue at the hearing also. The sanctions the Administrative Judge improperly imposed did not allow me that basic right.

CONCLUSION

The sanctions were imposed so the Agency would not have to discuss their intentional production and intentional release of E. Coli 0157:H7 upon unsuspecting people. The charges against me are simply not true. Discussion of either issue, E. Coli 0157:H7 or the racial

assault, at the hearing would have easily demonstrated the action the Agency took against me was retaliation for whistleblowing. I respectfully want to go back to work.

Also, something should be done concerning the abuse the Administrative Judges and the Merit Systems Protection Board inflicts upon whistleblowers within the federal bureaucracy.

Dated December 1, 1997

James W. Deaton

James W. Deaton, Ph.D.
Petitioner Pro Se
Listed in American Men and Women of Science

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 97-3236

JAMES W. DEATON

Petitioner,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

DECIDED: August 21, 1997

Before NEWMAN, PLAGER, and BRYSON, Circuit Judges.

PER CURIAM.

DECISION

James W. Deaton petitions for review of a final decision of the Merit Systems Protection Board, Docket No. AT-0752-96-0322-1-2, upholding the Department of Agriculture's removal of Deaton from his position with the agency. We affirm.

BACKGROUND

Deaton was employed as a Research Animal Scientist at the Poultry Research Unit of the Department of Agriculture. Effective January 20, 1996, the agency removed him from his position based on (1) misuse of a government photocopying machine: (2) attempted misuse of official government mail: (3) insubordination by failing to follow his supervisor's instructions regarding proper use of the government photocopier and official mail: (4) insubordination by failing to comply with his supervisor's instructions to prepare an acceptable abstract of his research on a timely basis: and (5) insubordination by twice refusing to comply with his supervisor's instructions to specify the training that Deaton thought he needed to meet his performance plan.

Deaton appealed his removal to the Board. An administrative judge issued an initial decision that sustained the agency's charges against Deaton and affirmed his removal. After the initial decision became final, Deaton petitioned this court for review.

DISCUSSION

In his petition to this court, Deaton asserts that the agency's charges against him are not true. The administrative judge, however, considered the evidence in the record, including Deaton's admissions and explanations. After hearing testimony and weighing the evidence, the administrative judge found with respect to charges 1 through 3 that Deaton had used a government photocopier for personal purposes, that he had attempted to use government mail for personal purposes, that he knew the agency's employee specifically prohibited the use of government resources and official mail for personal purposes, and that his supervisor had repeatedly instructed him to abide by that prohibition. Regarding charges 4 and 5, the administrative judge found that despite repeated instructions by his supervisor, Deaton had failed to prepare an acceptable abstract of his research, and that he had refused to specify what training he thought he needed to meet his performance plan. The administrative judge further found that Deaton in effect acknowledged that the intent of his request for training "was to create a lack of training defense since the opportunity to improve his

performance, which he had previously used to avoid termination, would no longer be available to him." The administrative judge added that "there can be no doubt that [Deaton] did not truly believe that he needed additional training to perform the duties of the position which he had been performing for many years." The record contains substantial evidence to support the administrative judge's findings on each of the sustained charges. Deaton further contends that the administrative judge improperly prohibited him from raising a "whistleblowing" defense to his removal. That defense arose from Deaton's allegation that his supervisor made a racially biased statement to another employee. Deaton claims that his disclosure of the supervisor's statement constituted a protected act of whistleblowing within the meaning of 5 U.S.C. Section 1213(a), and that the agency removed him in retaliation for reporting the incident.

Prior to the MSPB hearing, the administrative judge ordered Deaton to provide detailed information to the agency about the alleged whistleblowing disclosure. The administrative judge subsequently found that Deaton's response to that order was "clearly inadequate as

were his responses to the agency's discovery requests concerning the same matters." Based on Deaton's failure to comply with the MSPB hearing, the administrative judge barred Deaton from raising the whistleblowing issue as a defense to his removal.

Deaton has not addressed the issue of the administrative judge's discovery sanction other than to state, irresponsibly and groundlessly, that the administrative judge "has to be a racist simply based on the record he created." On the record before us, we see no reason to upset the administrative judge's determination that Deaton failed to comply with the administrative judge's discovery order or to satisfy the agency's legitimate discovery requests regarding the whistleblowing issue. We therefore uphold the administrative judge's ruling barring Deaton from raising that issue in the appeal from his removal action.

UNITED STATES COURT OF APPEALS FOR THE

FEDERAL CIRCUIT

97-3236

JAMES W. DEATON,
Petitioner,

v.

DEPARTMENT OF AGRICULTURE,
Respondent.

JUDGMENT

On a petition for review of an order of the Merit Systems Protection Board issued in AT0752960322-I-2 on February 26, 1997, denying review of the initial decision dated
September 30, 1996.

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED: AUG 21, 1997 JAN HORBALY, CLERK

ISSUED AS A MANDATE: October 21, 1997

ORDER

Before NEWMAN, Circuit Judge; PLAGER, Circuit Judge; and BRYSON, Circuit Judge.

A petition for rehearing having been filed by the PETITIONER,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate of the court will issue on October 14, 1997 unless another time becomes appropriate under Rule 41.

FOR THE COURT,
JAN HORBALY, CLERK

Dated: September 23, 1997

Alex Van Veen
Staff Law Clerk

cc: JAMES W. DEATON
REGINALD T. BLADES, JR.

DEATON V AGRICULTURE, 97-3236
(MSPB - AT0752960322-I-2)

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
ATLANTA REGIONAL OFFICE

JAMES W. DEATON,
Appellant,

DOCKET NUMBER
AT-0752-96-0322-I-2

v.

DEPARTMENT OF AGRICULTURE,
Agency.

DATE: JUN 27, 1996

ORDER

The appellant's letter dated June 23, 1996, with attachments, is hereby rejected for the following reasons.

First, the letter makes reference to the human pathogen project in violation of my June 26, 1996 Order. Thus, for this reason alone it must be rejected.

Second, the submission is part of a practice begun by the appellant in prior appeals and stays requests which is unacceptable.

The appellant, in a piecemeal effort, continues to raise arguments, make allegations, and submit documents on a regular basis. A telephone prehearing conference in this case has been scheduled for September 4, 1996. And, the appellant has been ordered to file prehearing submissions prior to that conference. The prehearing package is to be filed as one, single submission which is to include: (1) his statement as to the facts and issues in the case including his defenses, (2) a list of relevant facts, if any, on which he and the agency's representative agree, (3) a list of witness and a brief summary of the expected testimony of each individual, and (4) a copy of his exhibits, including an index. If any of this material continues to be submitted in a fragmentary manner, it will be rejected summarily. Moreover, any failure on the part of the appellant to comply with these instructions may result in the imposition of sanctions.

FOR THE BOARD:

Richard P. Klein
Administrative Judge